

ADDENDUM #2 to the 2011 Supplement to the 2005 New Market Master Plan, as amended

This addendum addresses issues raised by an organization known as Friends of Frederick County in a civil action against the Town of New Market. The issues are found in a document entitled, "Plaintiff's Answers to Interrogatories" dated August 19, 2011, and are responses to Interrogatories propounded by the Town of New Market in the pending declaratory judgment suit. The format of this addendum follows the sequence of the "Plaintiff's Answers to Interrogatories" and focuses on Interrogatories 1 and 2 which identify the matters, according to the Friends of Frederick County, that have "not been considered by the Town's Municipal Growth Element, although required to be considered under State law."

The issues raised by the Friends of Frederick County are answered with the understanding that the organization has made a striking and unexplainable mistake in its objections to the Municipal Growth Element. The Friends of Frederick County fails to realize that the Municipal Growth Element is only one of many elements required to build a community's comprehensive or master plan. To expect to find all the answers to questions of growth and change in a community in a single section of its comprehensive plan presupposes that each element is a stand-alone editorial entity that contains every other required element. This is not the case. In fact, Article 66B, §3.05(a)(3)(ii)(1) requires that "the elements of the plan shall be interrelated" not stand-alone sections. A planning commission could choose to attempt to create stand-alone plan elements covering transportation, community facilities, mineral resources, and other required elements, and cross-reference and repeat information so that each element contains all the information needed to understand the plan, but we doubt that this approach has ever been attempted and rightly so. To maintain that the New Market Municipal Growth Element does not address matters required by State law while not reading the rest of the New Market Master Plan reflects an incomplete analysis. It is comparable to a student declaring that he understands American history because he has read the textbook chapter on the Civil War and nothing before or after.

Our responses will not be limited to the material contained only in the Municipal Growth Element but will be drawn from the complete Master Plan as prepared by local residents acting as the Planning Commission. These local residents, along with their neighbors and government officials, have articulated a vision of their community's future and spelled out, as best they were able, a path to achieve that vision. The resulting a master plan is a document of judgments and choices made by people on the scene with the best information available.

The contentions of Friends of Frederick County, as provided in their discovery responses, and the Town's responses and analysis of those contentions, are set forth below.

It is the purpose of this Addendum to give consideration in the Plan to each of the matter identified by Friends of Frederick County in its discovery responses in the pending litigation.

INTERROGATORY NO. 1: If you contend that any matter as to which the Defendant is required by Article 66B, §3.05 to include consideration in Defendant's adopted comprehensive plan is not given consideration in Defendant's adopted comprehensive plan, identify each such matter.

CONTENTION #1-1: The Town's Municipal Growth Element does not address anticipated "future municipal growth area[s]" outside the existing corporate limits of the municipal corporation, as required by Art. 66B §3.05(a)(4)(x)1.

TOWN RESPONSE AND ANALYSIS: The requirement referred to is “consideration of anticipated future municipal growth areas outside the existing corporate limits of the municipal corporation.” Graphics, which accompany the plan, delineate the contemplated growth area. The Municipal Growth Element Checklist prepared by the Maryland Department of Planning and based on *Models and Guidelines, Volume 25, Writing the Municipal Growth Element to the Comprehensive Plan* suggests consideration of the following items: 1. Land Use Goals, 2. Development Goals, 3. Preservation Goals, and 4. Are the plan’s goals and visions consistent with long-term policy?

1. LAND USE GOALS

Regarding Land Use Goals, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Article I. Introduction

Section B. The Town’s Visions (Page 4) lays out the Town’s three fundamental visions. It also points out that “the recommendations and directions contained in this Municipal Growth Element are designed to be flexible and should be periodically reviewed and revised as situations warrant. Implementation of these recommendations should be phased-in over time, based upon community priorities, funding, resources, and market pressures.”

Article II. The Growth of New Market

Section C. Issues (Page 9) describes the transportation issues that must be resolved to achieve the desired land use pattern.

Article III. New Market’s Land Needs

Section C. Development Beyond Present Town Limits (Pages 14-18) analyzes the type and direction of growth and annexation.

Article VII. Relationship of New Market’s Long Term Development Policy to the Vision of its Future Character

Section B. Joint Planning with Frederick County (Pages 34-36) describe a joint planning process with Frederick County that “will allow the participants 1) to shape planning areas based on inherent regional logic and political willingness, and 2) to plan together on issues that need to be examined regionally but to retain local control over implementation and local issues so long as implementation is consistent with an overall multi-jurisdictional framework plan.”

The New Market Water Resources Element Addendum contains the following pertinent information and analysis:

Water Resources and Goals (Page 17) states that the Water Resources Goal for New Market is “To maintain a safe and adequate water supply and adequate capacities for wastewater treatment to serve projected growth; to take steps to

protect and restore water quality; and to meet water quality regulatory requirements in the Monocacy River watershed.”

The 2005 New Market Master Plan also contains the following pertinent information and analysis:

Article III. Visions, Strategies, and Actions

Achieving the Vision (Pages 17, 21, 42, and 47) contains the four Visions that drive planning in New Market. They are:

“THE FIRST VISION: New Market’s careful management and preservation of its character and historic identity is at the heart of its social and economic vitality – The highest priority in New Market is the care and protection of its great resource – the character of the town itself. New Market is a community of diversity; the town is a vital, year-round working community with a mixture of ages, income levels, architectural styles, commercial activities, and physical environments. The threads binding these diverse elements together are a quieter, slower town pace, a sense of intimacy produced by its historic buildings, layout, and small scale, and a mix of homes and shops that is the antithesis of modern commercialism. These qualities are enhanced by certain physical characteristics of the town’s layout such as easy walking distances, houses close to the street, sidewalks, vegetation, key focal points of activity, and an identifiable and historic town center.”

THE SECOND VISION: New Market’s prudent guidance of its geographic expansion and population growth has extended the characteristics of unity, variety, order, and balance that typify the community -- New development in and around New Market is imbued with the “New Market character” and is judged with consistent standards of design quality, environmental soundness, and fiscal impact. New Market is very careful in assessing opportunities for expansion and change and its standards are applied to maintain the rural character, environmental soundness, and overall visual quality of the town; to retain its predominant residential character along with its housing styles, walking scale, and history; and to encourage the pride of its residents and its stability and independence as a community.

THE THIRD VISION: New Market’s historic district is a balanced mix of residences and local-serving and regional businesses with a distinctive market niche and historic character -- The most important asset of New Market, its historic district, is readily identifiable in extent, contains a mix of mutually supporting residences, antique businesses, and personal services, and is controlled in architecture, historic quality, and signage. The scale of its buildings is linked to their surroundings and the pedestrian. It is identified as a statewide visitor destination, it is oriented to walkers rather than automobiles and contains a mix of businesses and homes, local and regional operations, and is dominated by locally-owned antique shop and other small businesses.

THE FOURTH VISION: The natural amenities and environmental resources of the New Market region have been protected to be enjoyed by and serve generations to come -- New Market is a community that takes special pride in the appearance of its urban spaces, the quality and the preservation of its natural environment, the carrying capacity of its natural resources and infrastructure, and the retention of its places of special beauty and interest. Its residents always have the time to give attention to the connections between past and

present, between the natural and the manmade, and between residents and visitors.

Overall Strategies #2 (Page 22) describes a process to encourage cooperative and coordinated planning in the New Market region for the benefit of both the town and county.

2. DEVELOPMENT GOALS

Regarding Development Goals, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Article I. Introduction

Section B. The Town's Visions (Page 5) describes the fundamentals against which all proposals for change will be measured.

Section B. The Town's Visions (Page 5) also describes "a set of tools for directing future change and managing the pace of that change so that both new and existing communities enjoy the quality of life envisioned by the best of our planning efforts."

Section B. The Town's Visions (Page 5) further describes a choice "choose to accept orderly, compact, phased, and compatible growth in our Planning Area as our alternative to the suburban sprawl, automobile-dependent development that has consumed hundreds of thousands of acres of valuable land across our country."

The New Market Water Resources Element Addendum contains the following pertinent information and analysis:

Water Resources Goals and Objectives (Page 17) lists objectives in support of the overall Water Resources Goal and presents water resource strategies and recommendations to achieve these objectives.

The 2005 New Market Master Plan contains the following pertinent information and analysis:

Article III. Visions, Strategies, and Actions

The First Vision

Overall Strategies #2 (Page 17) describes a strategy to minimize the impact of destination and through traffic on the community.

3. PRESERVATION GOALS

Regarding Preservation Goals, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Article I. Introduction

Section B. The Town's Visions (Page 5) states as a fundamental vision that "Changes in land use patterns must result in benefits and resolve problems. The market value realized through society's decisions to promote development (for example, through zoning, annexation, and infrastructure) will be directed toward a community vision of an improved quality of life and to offset initial costs and create substantial continuing revenue for the community."

Section B. The Town's Visions (Page 5) also lists a series of objectives designed "to maintain balance in New Market's economic, aesthetic, cultural, and historic elements. This notion is built on a commitment to change at a pace that preserves the Town's special quality of life, preserves its diversity of citizenry and architecture, and preserves open space and the environment, as well as the Town's historic character."

Article III. Visions, Strategies, and Actions

The Third Vision

Achieving the Vision (Pages 42-44) identifies strategies, policies, and actions to preserve the historic, small town atmosphere of New Market.

4. ARE THE PLAN'S GOALS AND VISIONS CONSISTENT WITH LONG-TERM POLICY?

Regarding Consistency, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Article VII Relationship of New Market's Long-Term Development Policy to the Vision of its Future Character (Pages 33-34) describes the relationship of New Market's long-term development policy to the vision of its future character.

The New Market Water Resources Element Addendum contains the following pertinent information and analysis:

The Introduction (Page 2) states "New Market's water and sewage treatment facilities are managed by Frederick County and provided to the Town based on Water Service Area Agreements that detail the timing and process for allocating water and sewer taps by the County to the Town."

The 2005 New Market Master Plan contains the following pertinent information and analysis:

Article III. Visions, Strategies, and Actions

Achieving the Vision (Pages 21-47) contains the four central Visions for New Market. Each Vision is accompanied by a set of Strategies, Land Use Policies, and Standards, Guidelines, and Administrative Measures expressed as specific action items for the Town to follow. The Visions, Strategies, Policies, and Actions are closely related and internally consistent.

CONTENTION #1-2: The Town's Municipal Growth Element does not address public schools (sic) services and infrastructure, as required by Art. 66B §3.05(a)(4)(x)5.A, relating to operating costs for schools for the Smith/Cline development and the impacts, e.g., costs and capacity, from the development of the Casey/Blentlinger property and other properties.

TOWN RESPONSE AND ANALYSIS: The overall requirement referred to is “consideration of public services and infrastructure needed to accommodate growth within the proposed municipal growth areas, including those necessary for...; [A summary of infrastructure impacts is contained on pages 28-29 in Section I. Infrastructure Summary of the MGE.] The detailed requirement is to consider “Public schools, sufficient to accommodate student population consistent with State rated capacity standards established by the Interagency Committee on School Construction.” There is no requirement to consider operating costs.

The Municipal Growth Element Checklist prepared by the Maryland Department of Planning and based on *Models and Guidelines, Volume 25, Writing the Municipal Growth Element to the Comprehensive Plan* suggests consideration of the following items: 1. Public School Capacity.

1. PUBLIC SCHOOL CAPACITY

Regarding public school capacity, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Section B. Public Schools (Pages 20-22) contains a discussion and analysis of school capacities.

Article III. Visions, Strategies, and Actions

The Second Vision

Overall Strategy #3 (Pages 27-30) contains a public school analysis that formed the basis of the analysis in the MGE.

Standards, Guidelines, and Administrative Measures (Page 42-44) describes specific actions to improve school planning.

New supplementary information regarding the requirement for public schools is contained in the following:

Following the discussion of school capacities on pages 20-22, the following material should be added: “The tables below provide the most up to date projection for the Oakdale and Lingnore feeder patterns. They are based on the projects in the FCPS 2010 EFMP. All Planning and Annexation Areas west of Boyer’s Mill Rd. are in the Oakdale feeder pattern. Thus, Smith Cline pupils would attend DCES, OMS and OHS. The tables below reflect the new data through 2019 as well as the changes from the NMMGE Adopted November 17, 2010.”

The current estimated cost of the Oakdale MS addition is \$8.9 million. Frederick County Public Schools has scheduled design in FY18 and construction in FY19 in the 2011 Superintendent’s Recommended Educational Facilities Master Plan. The Board of Education has a public hearing scheduled for the 2011 EFMP on September 14th and is scheduled to adopt the EFMP on

September 26th. The Oakdale MS addition project is not included in the County's approved FY12-17 CIP.

Oakdale Feeder Pattern

School	SRC	2009 Enrollment	2009 Enrollment	Projected 2019 Enrollment	Projected 2019 % SRC	Yield Factor	Smith-Cline Units	Smith-Cline Pupils	Additional Capacity Construction	2019 Enrollment Adjusted for Smith-Cline	2019 % SRC Adjusted for Smith-Cline
Deer-crossing ES	641	772	120%	755	118%	0.34	925	314.50	0	1,069.50	167%
Oakdale MS	600	600	100%	690	115%	0.15	925	138.75	300	828.75	92%
Oakdale HS	1,600	0	0%	1,204	75%	0.21	925	194.25	0	1,398.25	87%

Linganore Feeder Pattern

School	SRC	2009 Enrollment	%SRC	Projected 2019 Enrollment	Projected 2019 % SRC	Yield Factor
New Market ES	702	557	79%	834	119%	0.26
Green Valley ES	504	456	90%	519	102%	0.24
New Market MS	881	765	87%	618	70%	0.14
Windsor Knolls MS	924	606	66%	764	83%	0.10
Linganore HS	1,600	1,766	110%	1,350	84%	0.11

Changes in FCPS Enrollment Projections

School	SRC	Modified 2B 2009 Enrollment	2010 EFMP 2009 Enrollment	2009 % Δ SRC	Modified 2B 2014 Enrollment	2010 EFMP 2014 Enrollment	2014 % Δ SRC	2010 EFMP 2014 SRC
Deercrossing ES	641	757	772	2%	711	681	-5%	106%
Oakdale MS	600	579	600	4%	613	648	6%	108%
Oakdale HS	1,600	0	0	0%	1,204	1,200	0%	75%
New Market ES	702	533	557	3%	719	769	7%	110%
New Market MS	881	809	765	-5%	581	526	-6%	60%
Linganore HS	1,600	1,751	1,766	1%	1,449	1,487	2%	93%

“It should be noted that Smith Cline pupil yield is based on single family homes.

“The current school projections are consistent with the NMMGE Adopted November 17, 2010. There will not be enough elementary school capacity for the Smith Cline development. There is an overall need for 561 elementary school seats. This includes 132 seats at NMES, 114 seat at DCES and 315 seats generated by Smith Cline. Thus, through the joint planning process, the Town and County must establish growth staging and funding mechanisms to resolve long-term elementary school capacity issues.

“The Town maintains that capacity for Town growth should be reserved as a matter of policy. Relative to the overall regional population, the Town occupies only a small percentage of school capacity at any level. Smart Growth would suggest that if development should occur around currently developed areas, then school capacity must be reserved to achieve this goal for the Town.”

Article VI Section B (Financing Responsibilities) of the Municipal Growth Element states, “New development will pay its fair share of the costs associated with community facilities...” Similar to road infrastructure, upon appropriate study of projected school capacities, pupil yields attributable to annexed development and an establishment of a reasonable phasing schedule that provides currency of development with school facilities, the Town may enter an annexation agreement that requires the developer to pay additional school enhancement money above and beyond County impact fees in order to facilitate the construction of new capacity.

CONTENTION #1-3: The Town's Municipal Growth Element does not address public safety services and infrastructure, as required by Art. 66B §3.05(a)(4)(x)5.C, relating to police service for the commercial and industrial areas, fire protection, and emergency medical services, nor does it address the operating costs or the anticipated capital costs for such services.

TOWN RESPONSE AND ANALYSIS: The overall requirement referred to is “consideration of public services and infrastructure needed to accommodate growth within the proposed municipal growth areas, including those necessary for...Public Safety, including Emergency Medical Response.” There is no requirement to consider operating costs or capital costs. The standard

ratios of police officers and fire engines per 1,000 of population suggested by the Maryland Department of Planning were used in New Market's analysis and these ratios incorporate, of course, all land use categories including commercial and industrial areas.

The Municipal Growth Element Checklist prepared by the Maryland Department of Planning and based on *Models and Guidelines, Volume 25, Writing the Municipal Growth Element to the Comprehensive Plan* suggests consideration of the following items: 1. Public safety, medical response, police, and fire.

1. Public safety, medical response, police, and fire

Regarding public safety, medical response, police, and fire, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Article IV. Growth's Impact on Public Services and Facilities

Section D. Public Safety (Page 23) describes police and public safety impacts.

Article III. Visions, Strategies, and Actions

The Second Vision

Overall Strategies #3 (Page 31-33) contain a police, fire, and rescue analysis that formed the basis of the analysis in the MGE.

Standards, Guidelines, and Administrative Measures (Page 40) describes specific actions to improve public safety.

New supplementary information regarding the requirement for *public safety* is contained in the following:

Section 1. Police and Public Safety on page 23 is revised to read – “Both police and fire and rescue are services both town and county residents pay alike. To the extent the Town provides extra or duplicate services by participating in the Extra Duty Hours Program or budgetary contributions or fee waivers to the NMVFD, these expenditures would be eligible for a County-Municipal Tax set-off. The cost of these services and the required increase in resident's taxes to pay for them is discussed on pg. 23 of the NMMGE. The marginal income from taxes received from each new county/town resident should cover the marginal cost of that resident. Thus, if the County provides one deputy per every 750 residents and new deputy can be hired when the 750th resident moves in. If a new deputy can not be hired this would be an indication of a structural problem with the tax rate. Since County and town residents are all paying the County the same tax we should each receive the same service provided the County's tax structure is appropriate. Nonetheless, the Town desires to not only maintain but grow its public safety coverage through Extra Hours and Community Deputy Programs as the Town grows. The Town has a good relationship with the Sheriff's Dept. as well as the Frederick County Division of Emergency Management as evidence by adopting their Hazard Mitigation Plan. The Town views these services as shared, not necessarily proprietary to the County exclusively. As the current Board of County Commissioners stated, “we are One County.”

CONTENTION #1-4: The Town's Municipal Growth Element does not address the need for water and sewerage facilities, as required by Art. 66B §3.05(a)(4)(x)5.D, relating to the need/capacity, operating costs, and capital costs for the commercial and industrial development's water and sewerage needs.

TOWN RESPONSE AND ANALYSIS: The overall requirement referred to is “consideration of public services and infrastructure needed to accommodate growth within the proposed municipal growth areas, including those necessary for...water and sewerage facilities.” There is no requirement to consider the County's operating costs or capital costs for commercial and industrial development’s water and sewerage needs, which are funded by user fees periodically remitted by utility customers. Nor does the Town of New Market exercise any fiscal policy discretion regarding operating costs, as the facilities are operated and managed by Frederick County.

The Municipal Growth Element Checklist prepared by the Maryland Department of Planning and based on *Models and Guidelines, Volume 25, Writing the Municipal Growth Element to the Comprehensive Plan* suggests consideration of the following items: 1. Water facilities and Sewer Facilities.

1. Water Facilities

Regarding water facilities, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Article IV. Growth’s Impact on Public Services and Facilities

Section E. Water and Sewerage Facilities (Pages 23-26) describes water facility impacts.

The New Market Water Resources Element Addendum contains the following pertinent information and analysis:

Drinking Water Capacity and Demand (Pages 8-9) analyzes drinking water capacity and demand and the water demand created by projected Town growth.

The 2005 New Market Master Plan contains the following pertinent information and analysis:

Article II. The Master Planning Challenge

Community Facilities (Pages 11-13) contains a description of the issues relating to water supply.

The Second Vision

Overall Strategies #3 (Page 33) contains a utility analysis that formed the basis of the analysis in the MGE.

New supplementary information regarding the requirement for water facilities has been provided by Frederick County’s Division of Utilities and Solid Waste Management (DUSWM) and follows:

“The provision of water and sewer service within the Town of New Market, by agreement, is provided by Frederick County, specifically, the County’s Division of Utilities and Solid Waste Management (DUSWM). The DUSWM water and sewer systems are proprietary enterprise funds

within the County government. The DUSWM uses a number of mechanisms to fund water and sewer system expansions and improvements. The County and its municipalities have the legal means to finance water and sewerage facilities through the issuance of general obligation bonds backed by the full faith and credit of the respective jurisdiction. With few exceptions the major elements of the water and sewer infrastructure such as treatment plants, transmission lines and interceptors are funded by the enterprise's Capital Improvements Program (CIP), while distribution system expansions are typically funded by developers or others. The County's water and sewer plan provides additional detail on the anticipated expansion (and source of funding) of County water and sewer systems.

"As mentioned earlier, by agreement, the County is the sole provider of water in the Town. Paragraph 10 of the WSAA specifically states: "The Town acknowledges and agrees that the County shall be the sole provider of water service within the boundaries of the Town, as shown on Exhibit A. To the extent that the boundaries may, from time to time, be modified through annexation, the Town and the County will amend this WSAA or enter into a new agreement for water service to additional areas."

"Specific information on the County's water supply system can be found in the County's Water and Sewerage Plan. The County's Potomac River water supply is the primary source of water for the Town of New Market. Both the incorporated and un-incorporated areas near New Market are designated to be served by the County's public water supply. Specifically, the New Market area is served by the County's East County Water Distribution system which relies on the Potomac River supply, which has a permitted and physical capacity of 25 million gallons per day (MGD). Although the amount of water system capacity provided is presently limited by the WSAA, these limitations were based on the need to complete certain water (and sewer) infrastructure projects to establish the full amount of capacity needed by the area. The WSAA agreement is a living document, which can be amended as needed to increase the amount of water system capacity specifically available to and provided within the Town. The County's Potomac River water supply system currently has adequate capacity to serve the number of equivalent dwelling units the Town expects to have at build-out. However, water distribution lines within the Town, to serve all of these units, are not yet in place.

"The County's Potomac River water supply, which includes the County's New Design Road Water Treatment Plant, has a permitted and installed capacity of 25 MGD. The recently expanded New Design Road WTP has been designed so that it can be expanded in increments up to 45 MGD.

"The County prospectively uses the 250 GPD/EDU average daily value until actual long-term demand data for a particular area is established and can be relied upon. Presently the entire Town is not served by the County's public water supply system. The WSAA anticipated a protracted expansion of water lines into the Town, which is in part the basis for the allocation tables in the WSAA. The County allocates water system capacity based on maximum day demand not average daily demand."

2. Sewer Facilities

Regarding sewer facilities, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Section E. Water and Sewerage Facilities (Pages 23-26) describes sewer facility impacts.

The New Market Water Resources Element Addendum contains the following pertinent information and analysis:

Wastewater Treatment Capacity and Demand (Pages 9-13) analyzes wastewater treatment capacity and demand, and sewer demands created by Town growth.

The 2005 New Market Master Plan contains the following pertinent information and analysis:

Article II. The Master Planning Challenge

Community Facilities (Pages 11-13) contains a description of the issues relating to sewer facilities.

The Second Vision

Overall Strategies #3 (Page 33) contains a utility analysis that forms the basis of the analysis in the MGE.

New supplementary information regarding the requirement for water facilities has been provided by Frederick County's Division of Utilities and Solid Waste Management (DUSWM) and follows:

"The provision of water and sewer service within the Town of New Market, by agreement, is provided by Frederick County, specifically, the County's Division of Utilities and Solid Waste Management (DUSWM). The DUSWM water and sewer systems are proprietary enterprise funds within the County government. The DUSWM uses a number of mechanisms to fund water and sewer system expansions and improvements. The County and its municipalities have the legal means to finance water and sewerage facilities through the issuance of general obligation bonds backed by the full faith and credit of the respective jurisdiction. With few exceptions the major elements of the water and sewer infrastructure such as treatment plants, transmission lines and interceptors are funded by the enterprise's Capital Improvements Program (CIP), while distribution system expansions are typically funded by developers or others. The County's water and sewer plan provides additional detail on the anticipated expansion (and source of funding) of County water and sewer systems.

"The existing New Market and Monrovia WWTPs are County owned facilities, which provide wastewater treatment for properties within the Town of New Market as well as unincorporated areas outside of the Town. The capacity of the first phase of the Ballenger-McKinney WWTP, which is presently under construction, is 15 MGD (37.5 MGD Peak). This treatment plant's capacity and the decommissioning of the New Market and Monrovia WWTPs is well documented in the County's Water and Sewerage Plan. Please refer to page 4-15 in Chapter 4 of the Plan for more information on the County's Ballenger-McKinney WWTP and the systematic diversion of flows from minor WWTP that do not have advanced (ENR) treatment systems.

"The New Market and Monrovia WWTPs, which currently serve portions of the Town, will be decommissioned once the new Bush Creek Interceptor is completed. The elimination of these existing WWTPs and the diversion of their flow to the Ballenger-McKinney Enhanced Nutrient Removal (ENR) WWTP is discussed in detail in the Frederick County Water and Sewerage Plan.

The Ballenger-McKinney WWTP is currently permitted for 15 MGD flow and has nutrient allocation for 18 MGD.”

CONTENTION #1-5: The Town's Municipal Growth Element does not address the traffic impact on the area's road network, as required by Art. 66B §3.05(a)(4)(x)5, relating to the impact on existing roads and their needed improvements, the need for and location of new roads, and the cost and financing for all such roads and improvements, with the exception of inadequately assessing a need for a bypass road, as discussed in the answer to Interrogatory number 2.

TOWN RESPONSE AND ANALYSIS: Art. 66B §3.05(a)(4)(x)(5) does not identify any specific requirement to address traffic impact. Transportation planning issues are included in other subsections of §3.05. The statute requires “consideration of public services and infrastructure needed to accommodate growth within the proposed municipal growth areas...” There is no specific requirement to address or predict capital costs for transportation infrastructure in §3.05(a)(4)(x)(5). The Plan includes a detailed Transportation element addressing these issues in the growth area, to which reference is made for a detailed analysis of growth-related transportation and traffic issues and recommendations.

The Municipal Growth Element Checklist prepared by the Maryland Department of Planning and based on *Models and Guidelines, Volume 25, Writing the Municipal Growth Element to the Comprehensive Plan* does not contain a transportation category. Article 66B, however, requires a transportation element that (1) proposes the most appropriate and desirable patterns for the general location, character, and extent of the channels, routes, and terminals for transportation facilities, and for the circulation of persons and goods on a schedule that extends as far into the future as is reasonable; (2) provides for bicycle and pedestrian access and travelways; and (3) includes an estimate of the probable utilization of any proposed improvement.

1. Transportation

Regarding transportation facilities, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Article II. The Growth of New Market

Section C. Issues (Page 9) describes the transportation issues that must be resolved to achieve the desired land use pattern.

Article IV. Growth's Impact on Public Services and Facilities

Section A. Transportation (Pages 18-20) describes growth's impact on auto-based and non-auto based transportation.

The 2005 New Market Master Plan contains the following pertinent information and analysis:

Thoroughfares (Page 7) contains a discussion of the Town's key transportation issues.

New supplementary information regarding transportation is contained in the following:

Section IV. Growth's Impact on Public Services and Facilities

A. Transportation

1. Auto-based Transportation beginning on page 18 should be revised to read: “Article 66B states, ‘A transportation plan element which shall show proposals for the most appropriate and desirable patterns for the general location, character, and extent of the channels, routes and terminals for transportation facilities, and for the circulation of persons and goods at specified times as far into the future as is reasonable.’ We only need to look 10 years into the future to know that a bypass will be needed.

“In 2007 the County commissioned Wilson T. Ballard Co. to conduct a series of traffic studies. Wilson T. Ballard Co. is also the Town’s engineer. The Summary of Traffic Projections for The Town of New Market is attached to this supplement (see Appendix 9). It summarizes all the County studies from March 2006 to February 2008. Both MDP and MDOT comments suggest that the completion of the Meadow road Interchange and Eaglehead Drive will “relieve traffic pressure on Main St.” However, these mitigation and improvements are already included in the studies. Thus, even with the Meadow Road Interchange and the completion of Eaglehead Drive, the Town faces 3,050 VPH at peak hour or a v/c ratio of 1.14.

“It has been further suggested that the traffic studies did not reflect the latest land use policies adopted in the County Comprehensive Plan adopted April 2010. However, Table 5, pg. 19 of the NMMGE provides just that information. The Town commissioned Wilson T. Ballard Co. to analyze those revisions. Both Eric Soter and Jim Gugel of Frederick County Planning provided the break down of the units as well as providing clarification. The County land use changes only take 31 peak hour trips off Main St.

“MDP also suggests connecting Royal Oaks Drive to Md. 874 to Md. 75 as proposed in the County Comprehensive Plan. First, the Town has negotiated such a connection with the developer as part of the LUYAA fields (see Map 3). As this entails a revision to an already approved plan, the endeavor took some effort. Now that the LUYAA field plan is approved and easements recorded it is unlikely that the developer would again redo his plan. Further, it is doubtful if not wishful thinking that a significant amount of traffic would be diverted from Main St. by such a connection. The number of units comprising that area is very small relative to the overall area. Secondly, the Town plans to make another such connection to Md. 75 from Royal Oaks Dr. via the bypass. This will create multiple alternatives for accessing the fields as well as Md. 75. It also creates the grid transportation network described in the NMMGE.

“Lastly, both MDOT and MDP question the methodology of the studies based on County comment to them. No specifics are provided. Verification of methodology and scoping can be found in a letter from Shawn Burnett of the Wilson T. Ballard Company (Appendix 4). It is incredulous that suggest that the County would spend tens of thousands of dollars as well as many hours of public workshop time on studies predicated on faulty methodology. It is surprising that the County had so much say in MDOT’s and MDP’s comments without any clarification from the Town, hence, the Town’s comment regarding the volatile political nature of the planning process.

“The bypass would extend from its current western terminus described above through the Smith Cline, Town and Delaplaine property at its eastern terminus at Md. 874 (see Map 4). As safety is MDOT’s number one priority, so is it the Town’s. Main St. will not be safe for motorists, pedestrians or bicyclists with 3,050 VPH at peak hour.

“MDP’s comments state Main St. volume is current well below capacity in terms of ADT. This does not take into account peak hour volumes. As the studies suggest and Article 66B states, the Town is looking into the future as far as is reasonable.”

CONTENTION #1-6: The Town's Municipal Growth Element does not address the financing mechanisms necessary to support services and infrastructure, as required by Art. 66B §3.05(a)(4)(x)6, relating to the capital and operating costs and the specifics of the financing mechanisms.

TOWN RESPONSE AND ANALYSIS: The overall requirement referred to is consideration of "anticipated financing mechanisms to support necessary public services and infrastructure." There is no requirement to determine operating costs or specific financing sources, terms or loan structures. The statute envisions consideration of financing methodologies, *e.g.*, public financing, developer contributions, regulatory exactions, tax increment financing, special taxing districts, and the like. The cost of such improvements ultimately depends upon a multitude of factors, which may not be predicted with certainty, such as supply and demand, development costs, absorption, types and densities of development, and available financing by the lending community, which are within the discretion of developers and lenders operating in a free economy.

The Municipal Growth Element Checklist prepared by the Maryland Department of Planning and based on *Models and Guidelines, Volume 25, Writing the Municipal Growth Element to the Comprehensive Plan* suggests consideration of the following items: Identify ways for financing future infrastructure improvements (developer, impact fees, taxes...) and when possible, identify associated costs with improvements.

1. Identify ways for financing future infrastructure improvements (developer, impact fees, taxes...)

Regarding financing means, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Article I. Introduction

Section B. The Town’s Visions (Page 5) state the fundamental vision that “Changes in land use patterns must result in benefits and resolve problems. The market value realized through society’s decisions to promote development (for example, through zoning, annexation, and infrastructure) will be directed toward a community vision of an improved quality of life and to offset initial costs and create substantial continuing revenue for the community.”

Article II. The Growth of New Market

Section C. Issues (Page 9) states that “No new development should be approved unless it can be determined that it will substantially contribute to improvements in safety and traffic flow in the New Market Planning Area. In addition, no new development will be allowed unless it can be determined that adequate public facilities and infrastructure are in place or are planned and funded for construction within a reasonable time period in conjunction with the proposed development.”

Article VI. Financing of Infrastructure Expansion (Page 32) contains the guiding standards for financing infrastructure expansion.

Section B. Financing Responsibilities (Pages 32-33) contains a description of how infrastructure responsibilities will be shared. The key phrase is “No new development will be approved within the Planning Area unless it can be determined that adequate public facilities and infrastructure are in place or are planned and funded for construction within a reasonable time period in conjunction with the proposed development.”

The 2005 New Market Master Plan contains the following pertinent information and analysis:

Article III. Visions, Strategies, and Actions

Land Use Policies (Page 38) states as one of several Land Use Policies that “Areas chosen for annexation/development shall be subject to public facilities concurrency and have an adequate level of school facilities; fire, rescue, and police protection; water and sewer facilities; transportation support; recreational opportunities; and other public facilities as identified.”

2. When possible identify associated costs with improvements

New Market has not attempted to identify all improvement costs in detail but will rely on its policy of concurrency, no matter what the costs turn out to be.

New supplementary information regarding the requirement for anticipated financing mechanisms to support necessary public services and infrastructure is contained in the following:

A new section, 3. Financing, following Section IV. Growth’s Impact on Public Services and Facilities, A. Transportation, 2. Non-auto-based Transportation is added to read as follows:

“3. Financing

“Article VI Section B. Financing Responsibilities of the MGE states, “New development will pay its fair share of the costs associated with community facilities....” For example, as part of the yet completed Food Lion annexation, the Town requested the petitioner conduct a traffic study. Since the petitioner would be crossing an annexation threshold, the Town has the flexibility to set an appropriate standard on a case-by-case basis. The Town required that the study be congruent with the County’s APFO for roads. The Town Engineer, Wilson T. Ballard Co. reviewed the study and made the appropriate adjustments to the pro-rata share of road improvement contributions to be made to County escrow accounts designated for those improvements. (see appendices 5&6).

“Likewise a proposed bypass would require similar study and analysis. The initial capital outlay for the bypass would be borne and secured by the developer. Since it is contemplated that this road should be an extension of Mussetter Rd., it is likewise expected that it would appropriately be incorporated into the County road system and built to County road standards. The annual maintenance costs would come from the operating budgets of both Town and County as reasonably determined.

Article VI Section B. of the MGE (pages 32-33) Financing Responsibilities states, “New development will pay its fair share of the costs associated with community facilities....” Add language stating “Similar to road infrastructure, upon appropriate study of projected school

capacities, pupil yields attributable to annexed development and an establishment of a reasonable phasing schedule that provides currency of development with school facilities, the Town may enter an annexation agreement that requires the developer to pay additional school enhancement money above and beyond the County impact fees in order to facilitate the construction of new capacity.”

Article VI Section B. Financing Responsibilities of the MGE states, “New development will pay its fair share of the costs associated with community facilities....” Add language stating “Similar to road infrastructure, upon appropriate study of public safety needs the Town may set a reasonable phasing schedule that provides currency of development with public safety facilities. The Town may enter an annexation agreement that requires the developer to pay additional public safety enhancement money to provide for the construction or renovation of new facilities. For example, the Smith Cline annexation had provided for \$750,000 to go toward the construction of the NMVFD banquet hall.”

Section VI. Financing of Infrastructure Expansion, B. Financing Responsibilities (pages 32-33) should be further amplified by adding the following material:

“1. Financing Generally

“The Town’s operating revenues in FY’10 were \$399,000. The Town’s main sources of revenue were Real Property Taxes (\$127,000 or 32%), Income Tax (\$114,000 or 28%), Admissions and Amusement Taxes (\$68,000 or 17%) and Personal Property and other Business Taxes (\$30,763 or 8%) and Construction Permitting and other Development Fees (\$29,000 or 7%). The Town’s SHUR fees were cut \$29,000 or 7% of total revenue. County Tax Equity was \$12,000. However, the previous Board of County Commissioners had threatened to unilaterally withhold this funding.

“The Town’s operating expenses for FY’ 10 were \$286,000. The Town’s main expenses were Public Works (\$123,000 or 43%), Salaries, Financial and Legal Administration (\$90,000 or 31%), and Public Safety (\$18,000 or 5%).

“The Town’s Operating Budget is a cash budget. It does not account for amortization of capital expenses such as road, building, storm drainage and other capital item. For this reason, the annual budget report contains a discussion of these items pursuant to an in house fiscal impact of current development and infrastructure. The economic life of each item is estimated and broken into its annual amortization cost. For FY’ 10 this amount was estimated at \$47,000. Thus, the Town endeavors to ensure that its Unappropriated reserve is always set above this amount. Thus, ensures that has long term capital items come due for replacement; the money is ready and available to fund it. The Town’s CIP for FY’ 11 was \$829,000. The General Fund Provided \$670,000, Grants provided \$30,000 and loans \$129,000. The Town’s actual Unappropriated Reserve for FY’ 10 was \$113,000. It is anticipated that loan funding in the CIP will not be needed should the Town continue to out perform its budget by \$66,000 annually.

2. “Water Line Construction Financing

“During FY ’08 and FY ’09 the Town completed two major waterline projects with the County. The total cost of these projects was \$1.8 million. The Town funded \$900,000 from it General Fund and \$900,000 from developer Community Enhancement contributions. This demonstrates the importance of how developer contributions can be used the update facilities that are inadequate attributable to legacy issues.

“3. Future Non-Development Infrastructure Cost

“A. Streetscape

“Streetscape is a \$4 million dollar drainage, sidewalk repair, landscaping and Main St. repaving project. In exchange for these improvements, the Town must agree to take transfer of Main St. and its maintenance responsibilities. This could add as much as \$50,000 to annual amortization cost.

“The sidewalks in the Historic District are in poor condition at best. Many areas are likely impassable for those in wheelchairs and a tripping hazard for those who are not. The Town could not do this project without SHA funding. The Alternative would be to adopt an ordinance placing sidewalk repair and maintenance on property owners.

“Thus the Town must expand and diversify its tax base in order to find a permanent solution to this legacy inadequacy issue.”

Section VI. Financing of Infrastructure Expansion, B. Financing Responsibilities (pages 32-33) should be further amplified by adding the following material:

“4. New Development Financing,

“A. APFO Mitigation Funding vs. Municipal Annexation Funding -- “The Town will use municipal annexation agreements and Developer’s Right’s and Responsibilities Agreement to both finance and achieve concurrency of infrastructure and public facilities with development.

“The Town prefers these tools for the purpose of financing infrastructure and achieving concurrency for the following reasons.

“APFO does not efficiently take into consideration legacy issues. These legacy issues create a complex set of equations that APFO alone can not solve. As such, APFO often resembles moratoria. It therefore does not always achieve its intended purpose of achieving concurrency of development and public facilities as well as providing affordable housing.¹ As APFO restricts available land that’s highest and best use is for housing, the price available housing increases. As development patterns generally occur in concentric rings from previously developed areas, APFO restrictions pushes market demand to someone else’s community without solving the problem.² In fact, it increases pressure on existing infrastructure such as roads as well as increasing commuter distances at the detriment to the environment.

“APFO has other weaknesses. Impact fees derived from the construction of new homes are collected after the development passes the APFO test. These fees can only keep you concurrent. They can not solve the legacy issues. Further, Judge Cathell in Steel vs. Cape observed that the County can not disproportionately place the burden of adequate public schools upon the developer. More concerning is the questionable validity of APFO waiver payments.³ In Halle Development Co. vs. Anne Arundel County the Court intimated that these fees not only resembled illegal taxes but questioned the impropriety of allowing developers to buy land use accommodations.

¹ William C. Wantz, Esq., “A Comparison of Adequate Public Facilities Ordinances with Other Infrastructure Concurrency Techniques in Municipal Annexation”, December 2003, p. 2 (see Appendix 3).

² Ibid., pp. 3-7.

³ Ibid., pp. 8-9.

Essentially, those with money can buy extraordinary land use accommodations while those who can not must wait.⁴

“There are other concurrency tools that should be considered. They include, but not limited to, municipal annexation agreements, DRRA’s, WSAA’s and Joint Planning Agreements. These tools may be more appropriate for under bounded jurisdictions such as New Market. We have very little undeveloped land to apply an APFO. Annexation presents an opportunity to create a contractual relationship with a municipality premised on crossing the annexation threshold. Municipal annexation agreements provide concurrency by contract. They have several advantages over concurrency by regulation or APFO. First, they are judicially proven such as in Md. Ann. Code, Article 66B, § 4.01(c)(2) Mayor & Council of Rockville vs. Rylyns.⁵ Secondly, they are flexible and thus not one size fits all as is the County imposed APFO.⁶ Third, they allow for the payment in advance for public facilities. These payments are financed through the 30 year mortgage market at the prevailing rate of interest.⁷ Thus local government piggybacks on the mortgage industry. Lastly, municipal annexation agreements are binding upon the developer and its successors.

“The County controls our utilities through a WSAA. Clearly, as recognized by Commissioner Gardner in her “Open Letter to The Residents of New Market”, no development can occur without utilities.⁸

“The Town recognizes that concurrency can only be reached incrementally as we overcome legacy issues. Only then can we provide a model to achieve the goals of Smart Growth, concurrency of public facilities and affordable housing.

“Using the identified concurrency tools we can create a model that uses the County APFO to drive development to currently developed areas such as municipalities. The municipalities negotiate an annexation agreement with the developer that arranges for the legal payment of money for needed public facilities. Since the WSAA only allows extension of services to the municipality to serve the annexed property after the annexation is final. The annexation agreement must meet the approval of the BOCC before they will extend services. No construction phasing can be set nor any development occur until after the annexation is final, the WSAA amended and a phasing schedule set in a subsequent DRRA executed concurrently with the WSAA amendment.

“Using this model as monumented in a Joint Planning Agreement ensures that the County and municipalities work cooperatively, not competitively. The through such an agreement the County can not develop property contiguous to the municipality without annexation, but neither can the municipality develop the property without satisfying the County. This model offers a collaborative method of accomplishing our mutual goals that minimizes the need for acrimony.

⁴ Ibid., pp. 13-14.

⁵ In addition, municipal annexation agreements are not subject to restraints applicable to traditional regulatory police power controls. An annexation agreement may be a condition precedent to annexation.

⁶ Ibid., pp. 14-15. See: Md. Ann. Code, Article 66B, § 4.01(c)(2), which codifies recognition of annexation agreements, authorizing such mechanisms to be used by municipalities in limiting uses and densities of development.

⁷ In residential development, the cost of developer-funded infrastructure is typically passed on to home purchasers who obtain purchase-money financing through conventional mortgage lenders.

⁸ Commissioners Gray, Thompson, Gardner and Hagan, “Open Letter to the Residents of New Market”, December 13, 2006, p. 2.

“B. Countywide School Construction Mitigation Fee

“The recitals to this supplement cite the new Board of County Commissioners desire to enter Joint Planning with the Town. The County has asked the Town to consider uniform countywide school construction fee. This proposes to provide for additional developer funding above and beyond the current impact fee for any school or combination of schools that do not pass the County APFO. This funding could provide for 115% of the actual per dwelling student impact. The Town is willing to investigate adopting this fee as part of a Joint Annexation Agreement. The Town would not adopt an APFO for the reasons stated above. However, it would consider setting a reasonable threshold for school capacity. The Town would then have a tool that is stronger than APFO it would have a concurrency agreement with the Town that is a legally binding contract.”

CONTENTION #1-7: The Town's Municipal Growth Element does not address the protection of sensitive areas that could be impacted by development planned within the proposed municipal growth areas, as required by Art. 66B §3.05(a)(4)(x)9. This includes the failure to identify sensitive areas, as defined in Article 66B, § 1.00(j), and their protection.

TOWN RESPONSE AND ANALYSIS: "Sensitive Areas" are defined in Article 66B, §1.00(j), to include (i) streams, wetlands, and their buffers; (ii) 100-year flood plains; (iii) habitats of threatened and endangered species; (iv) steep slopes; (v) agricultural and forest lands intended for resource protection or conservation; and (vi) other areas in need of special protection, as determined in the plan. Sensitive areas that could be impacted by development planned within the proposed municipal growth area are required to be addressed under §3.05(a)(4)(x)(9). This municipal growth area element requirement overlaps the broader element of the plan found in §3.05(a)(4)(ix), requiring that the plan include “a sensitive area element that contains goals, objectives, principles, policies, and standards designed to protect sensitive areas from the adverse effects of development.” The sensitive area element of the plan is subject to review by the Department of the Environment and the Department of Natural Resources under §3.05(a)(4)(ix)(2). Although the statute requires "consideration of...protection of sensitive areas...that could be impacted by development planned within the proposed municipal growth element," there is no statutory requirement that the plan include a catalog of particular sensitive areas. Instead, Article 66B contemplates that the plan give consideration to the protection of sensitive areas encountered in development review. The Plan addresses such protection by identifying protection techniques.

The Municipal Growth Element Checklist prepared by the Maryland Department of Planning and based on *Models and Guidelines, Volume 25, Writing the Municipal Growth Element to the Comprehensive Plan* suggests consideration of the following items: Rural Buffers/Transition Areas, Impacts of growth on sensitive areas, and Identify areas that may impede development (steep slopes, flood plains, etc.)

1. Rural Buffers/Transition Areas

Regarding rural buffers and transition areas, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Section B. The Town’s Visions (Page 5) state that a fundamental vision is that “Responsible changes in land use patterns will result in health, safety, and environmental protection and enhancement, especially when streams and their buffers are restored,

forested areas are connected, and other sensitive areas are maintained or restored to their natural state.”

Section C. Issues (Page 9) states that “...all development should be environmentally sensitive and that the natural character of land to be developed should be maintained. This includes development techniques commonly known as conservation design, and, at the lot level, environmental site design. Streams and wetlands are among the most sensitive features. They must have wide, protective natural buffers, and development must be designed not only to minimize impacts to these features, but also to restore natural functions. Environmentally sensitive development also means creating pedestrian-friendly streets so that people can walk to work, shop, or play.

“The Town does not want garages to be the most prominent feature of houses, nor does it want streets that are overly wide and huge parking lots that are unrelieved seas of asphalt. Our streets will be designed to be shared by all potential users and be pedestrian-friendly so that people can walk to work, shop, or play. Every development must provide significant, usable open space as an integral part of projects and neighborhoods – not afterthoughts. This also means the Town will work to improve existing open space to create green corridors of connected open space.”

Section V. Protection of Sensitive Areas in and Near New Market (Pages 30-31) contains recommendations for additional land use designations to address open space issues.

The 2005 New Market Master Plan contains the following pertinent information and analysis:

Standards, Guidelines, and Administrative Measures (Page 39-41) describes specific actions to ensure adequate open space.

Overall Strategies and Land Use Policies (Pages 45-46) identifies land use policies to protect land for open space, agriculture, and conservation.

2. Impacts of growth on sensitive areas

Regarding the impacts of growth on sensitive areas, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Section V. Protection of Sensitive Areas in and Near New Market (Pages 29-32) contains specific policies and recommendations for the protection of sensitive areas.

The New Market Water Resources Element Addendum contains the following pertinent information and analysis:

Quality of Effluent/Impact to Water Resources (Pages 10-13) analyzes the quality of effluent impact to water resources.

The 2005 New Market Master Plan contains the following pertinent information and analysis:

Natural Resources: Opportunities and Constraints (Pages 5-7) contains description of the issues surrounding regional geology and soils, floodplains, wetlands, agriculture, and forestry.

Overall Strategies #1 & #2 (Page 45) identifies strategies to protect the Town's natural water supply and encourage stewardship of the Chesapeake Bay and its tributary lands and to institute zoning practices, which protect and enhance the environment.

Standards, Guidelines, and Administrative Measures (Pages 46-47) identifies specific actions to protect floodplains and improve environmental awareness and monitoring.

3. Identify areas that may impede development (steep slopes, flood plain...)

Regarding areas that may impede development, the New Market Municipal Growth Element Addendum contains the following pertinent information and analysis:

Section V. Protection of Sensitive Areas in and Near New Market (Pages 29-32) identify areas that may impede development.

The 2005 New Market Master Plan contains the following pertinent information and analysis:

Natural Resources: Opportunities and Constraints (Pages 5-7) contains description of the issues surrounding regional geology and soils, floodplains, wetlands, agriculture, and forestry.

New supplementary information regarding the sensitive area requirement is contained in the attached maps provided by Frederick County. The three maps identify the steep slopes, forest cover, floodplains, wetlands and streams in the growth area. In the course of development application process, sensitive areas are protected from disturbance through a variety of existing regulatory techniques and controls which are implemented in site plan subdivision plat review, as part of the established development approval process. Because these techniques already exist, there is no need to further plan for the implementation of such conservation measures. Whether a particular sensitive area may be impacted, and what mitigation techniques are to be applied, are fact-specific inquiries which will depend upon the location and characteristics of the specific development proposed, and may properly be considered on a case-by-case basis. Protection of sensitive areas from proposed development is responsive to the development proposed. The Planning Commission of the Town has extensive authority in implementing the general policies and objectives of the Plan through appropriate application of existing regulatory mechanisms.

INTERROGATORY NO. 2: If you contend that any matter as to which the Defendant is required by Article 66B, §3.05 to include consideration in Defendant's adopted comprehensive plan is considered, but not given adequate consideration in Defendant's adopted comprehensive plan, identify the matter, explain how you contend the consideration of the matter in the Defendants' adopted comprehensive plan is inadequate, and state the facts upon which your contention is based.

CONTENTION #2-1: The Town's Municipal Growth Element does not give adequate consideration to the public schools (*sic*) services and infrastructure, as required by Art. 66B §3.05(a)(4)(x)5.A. The information relied upon is outdated and incomplete, and the need and cost for school facilities were not adequately considered, as the Municipal Growth Element failed to take into account that the middle school may not be built and funded by the County.

TOWN RESPONSE AND ANALYSIS: See the answer to Contention #1-2 above.

CONTENTION #2-2: The Town's Municipal Growth Element does not give adequate consideration to the water and sewerage facilities, as required by Art. 66B §3.05(a)(4)(x)5.D, regarding plans for alternate sources of water, and the capacity of certain water and sewer plants.

TOWN RESPONSE AND ANALYSIS: See the answer to Contention #1-4 above.

CONTENTION #2-3: The Town's Municipal Growth Element does not give adequate consideration to stormwater management, as required by Art. 66B §3.05(a)(4)(x)5.E, as there is no specification of the number and location of needed stormwater facilities, or their capital and operating costs, or the effects on the County stormwater system.

TOWN RESPONSE AND ANALYSIS: The New Market Water Resources Element Addendum to the 2005 New Market Master Plan contains a thorough analysis of stormwater management which has been reviewed by the Maryland Department of the Environment and the Maryland Department of Natural Resources. This Addendum is in a separate section of the Master Plan from the Municipal Growth Element Addendum, to which reference is made for a complete analysis, and which is hereby incorporated into the Municipal Growth Element, as if fully restated therein. The same policies which serve to protect the environment within the existing municipal boundaries of the Town are applicable in the growth area envisioned in the Plan. The Town's ordinances and development plan review procedures would become applicable to those areas upon annexation. In addition to these extensive regulatory controls, environmental issues may also be addressed through annexation agreements, in which the Town is empowered by statute to contractually restrict the uses and densities of future development adjacent to sensitive areas, based upon various considerations, including appropriate protection of sensitive areas.

CONTENTION #2-4: The Town's Municipal Growth Element does not give adequate consideration to roads, as required by Art. 66B §3.05(a)(4)(x)5, as the analysis used to assess needed roads relies upon outdated, erroneous, incomplete and otherwise invalid data and methodology. The consideration of a bypass road is inadequate, not only because it was based upon invalid data and methodology, but also because it fails to specify the exact location, the costs, and the financing mechanisms. Also not taken into consideration were the impacts of the bypass road on sensitive areas and other environmental impacts.

TOWN RESPONSE AND ANALYSIS: See the answer to Contention #1-5 above. The location of the proposed bypass is depicted in the adopted transportation plan. There is no requirement in the statute that the specific cost of the proposed bypass be determined at the time a municipal growth element is adopted. The element addresses planning well into the future, and can not precisely determine when the bypass may be developer-funded or constructed, or the development with which it may be concurrent. The cost estimates envisioned by Friends of Frederick County will largely be determined by the construction market when the project is bid, which may not be predicted or determined with precision at the time when the plan amendment is recommended or adopted. The cost of the proposed bypass, and the time when it may become feasible, are subject to a multitude of variables, including labor and material costs, economic conditions, market considerations and return on developer investment. The Town envisions that the construction of the proposed bypass will be developer-funded, with no public funding envisioned. In establishing

the proposed course of the bypass alignment, the Town has considered both its benefit and impact upon the community, concluding that the need is great, while the impact is small.

ATTACHMENTS

FREDERICK COUNTY SENSITIVE AREA MAP EXTRACTS

A. STREAM BUFFERS AND FLOODPLAINS

B. STEEP SLOPES

C. WOODLANDS